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ABSTRACT

This monograph presents an analysis of issues related to provision of extended school year (ESY) programs and services for students with disabilities. It discusses major court decisions that have established the case law that governs this area of special education. It also considers issues of eligibility, notice and timing requirements, and the content and duration of ESY services. An overview of state regulations is given. The final section of the document contains relevant excerpts from the special education regulations of 22 states. The report concludes that case law and policy interpretations by the Office of Special Education Programs have established the requirement that ESY services be provided for students with disabilities when the Individualized Education Program team decides that the child's needs warrant such additional programming. Educators are urged to address the following concerns in making these decisions: whether the child's current program is based on individual needs; the nature and severity of the child's disability; likelihood and severity of regression during an interruption in programming; likelihood of recouping such losses within an acceptable period of time; likelihood of failing short-term objectives without extended programming; and appropriate types of ESY instruction. (DB)

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EXTENDED SCHOOL YEAR: A BRIEF ANALYSIS OF STATE REGULATIONS AND POLICIES

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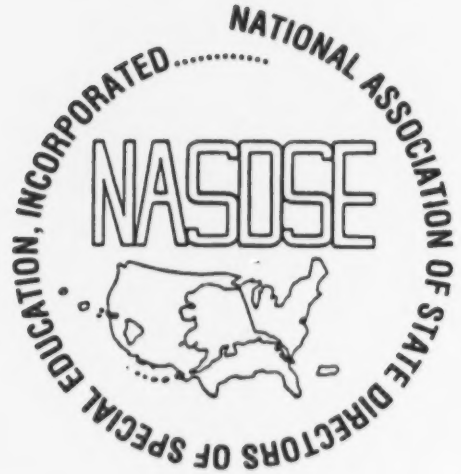

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ABSTRACT

As the result of numerous inquiries for information, Project FORUM has compiled information and examples of requirements related to the provision of extended school year (ESY) programs and services for students with disabilities. This document contains a brief analysis of the issues related to ESY including the major court decisions that have established the case law that governs this area of special education. In addition to the legal basis for ESY, this analysis includes a discussion of eligibility, notice and timing requirements, and the content and duration of ESY services. An overview of state regulations is also covered. The final section of the document contains excerpts from the special education regulations of 22 states.

FOREWORD

This report is the result of a study done under Project FORUM, a contract funded by the Office of Special Education Programs of the U. S. Department of Education and located at the National Association of State Directors of Special Education (NASDSE). Project FORUM carries out a variety of activities that provide information needed for program improvement, and promote the utilization of research data and other information for improving outcomes for students with disabilities. The project also provides technical assistance and information on emerging issues, and convenes small work groups to gather expert input, obtain feedback, and develop conceptual frameworks related to critical topics in special education.

The purpose of this brief analysis is to provide State Directors of Special Education and others interested in special education policy with a review of the current requirements for extended year programs for students with disabilities. This document is disseminated to various educational organizations and to ERIC. In addition, NASDSE sends a copy of all Project FORUM publications to each State Director and each Regional Resource Center Director.

EXTENDED SCHOOL YEAR: A BRIEF ANALYSIS OF STATE REGULATIONS AND POLICIES

INTRODUCTION

The federal law, Individuals With Disabilities Education Act (IDEA), specifies the requirements states must follow in providing special education and related services to students with disabilities. However, neither the law nor the related regulations refer to the provision of services beyond the traditional school year, the program component known as extended school year or ESY. As with many other areas in special education, current ESY practice is governed by case law that has evolved over the past twenty years, and has been incorporated into state laws and regulations. Each state's ESY policy and its implementation is examined periodically by the U. S. Department of Education's Office of Special Education (OSEP) as a part of its regular monitoring procedures.

Project FORUM staff and others at the National Association of State Directors of Special Education (NASDSE) have received many requests from State Departments of Education and others for information about state policies on ESY. As state administrators review their policies and procedures, it is important for them to have information about current trends in case law and the ways other states have operationalized new requirements. This brief analysis was undertaken to assist states in that process and to provide information on ESY for others interested in the topic. The report begins with a brief discussion of the ESY issue, including the major court cases that have defined it, followed by a review of the major features of current policy and practice as reflected in law and regulation. The final section of the report consists of excerpts from the current special education regulations of 22 states.

EXTENDED SCHOOL YEAR ISSUES

Legal Basis

The principle that each student with a disability is entitled to an individually designed education was established in a series of court cases that led to the adoption, in 1975, of the federal law now known as IDEA. A subsequent series of court cases and policy clarifications established that providing special education services beyond the usual school year is a part of the guarantee of the free, appropriate education (FAPE) clause of the IDEA (Olmi, Walker & Ruthven, 1995; Rapport & Thomas, 1993). These decisions have prescribed the basic requirements for ESY program eligibility and defined some related ESY elements such as the length and type of the ESY program, and funding matters including transportation. In

addition, the Office for Civil Rights (OCR) of the Department of Education ruled that even students regarded as disabled under Section 504 of the 1973 Rehabilitation Act, and not eligible for services under IDEA, have to be considered for ESY services. A Letter of Finding issued by OCR states that, "Section 504 regulation requires that the individual needs of *every* child be examined, considered, and met. While 180 days of school may be adequate for some handicapped students, it may not be adequate for others..." (Baltimore (MD) City Public Schools, 1986).

Eligibility for ESY

Eligibility for ESY services at no cost to parents is determined by the child's Individual Education Plan (IEP) team and must be discussed at every annual review team meeting. As with other components of the IEP process, parents have the right to appeal the ESY decision and eventually go to court if they are not satisfied with the decision of the team. This issue is made more difficult by the fact that there are no comprehensive eligibility criteria in the law, and only general standards have been mentioned by the courts for including ESY in a child's program. As a result, ESY requirements vary widely from state to state and even among districts within a state. In a study of almost 200 school districts located in the 5th and 10th Federal Judicial Circuits, Olmi, Walker and Ruthven (1995) found that, "little consistency exists with regard to eligibility criteria, methods for determining regression/recoupment, the availability of services, and children within disability categories ruled eligible for ESY services" (p. 79).

The one rule that has been established is that no single criterion can be used as a sole qualifying factor. Judicial decisions have set various areas of consideration for determining eligibility, starting with the concept of *regression/recoupment* first established by *Battle v. Commonwealth of Pennsylvania* (1980). Regression refers to a decline in knowledge and skills that can result from an interruption in education; recoupment is the amount of time it takes to regain the prior level of functioning. As stated in a subsequent case, "The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months" (Rapport & Thomas, 1993, p.24). This criterion for eligibility is a primary consideration to be used by IEP teams in making ESY decisions, and it covers both instructional and related services for the prevention of academic and physical regression.

A more recent case, *Ruesch v. Fountain* (1994), cited a Maryland school district for "...the use of a standard for ESY eligibility which was incorrectly limited to a regression/recoupment analysis and did not consider other factors which were relevant in the ESY determination." The decision said that this standard may be used, but only as one part of a multi-faceted inquiry. According to the decision, "...a variety of nonregresssion-based

factors—for example, 'emerging skills and 'breakthrough opportunities' (as when a child is on the brink of learning to read)—can and should be incorporated into the eligibility analysis."

Another criterion usually included in the eligibility determination is the *nature and severity of the child's disability*. Children with severe disabilities are more likely to be involved in ESY programs, but there can be no specific limitation on eligibility based on type of disability. ESY programs are not required to provide a child with education beyond that prescribed in an appropriate IEP, but rather to make it possible for the child to benefit from the IEP. Part of the consideration for making a decision on ESY services will be the degree and nature of the child's disability, but that can be only one component of the decisionmaking process.

OSEP reiterated the same eligibility criteria in clarifying requirements for ESY as they apply to children turning age three during the summer months: "First, the determination of what constitutes FAPE for a child, including the need for ESY services, must be made on an individualized basis as part of the IEP process. Second, a State may not have a policy that excludes any disability category from eligibility for ESY services" (Letter to Anonymous [Transition/Part H to Part B], 1993).

Notice and Timing

Another point made by the court in the *Ruesch v. Fountain* case was the importance of making a decision about ESY early enough in the year to allow the parents adequate time to exercise their right to administrative review or appeal in a timely fashion. That decision of the U.S. District Court in Maryland prescribed very specific requirements relative to ESY procedures. The court found that the explanation about ESY contained in a brochure distributed to all students was not sufficient and ordered additional explanation to be provided to parents. The court also ordered that the student's eligibility for ESY be considered at each annual review meeting, and that parents sign a form acknowledging their receipt of this information. The district must document the discussion and the decision reached after consideration of ESY eligibility at each annual review meeting.

Content and Duration of ESY Programs

Some ESY programs are daily throughout the summer recess period, while others provide only for periodic contact with professionals, or assistance to parents in providing instruction or reinforcement to their children. In response to a question posed by an attorney, OSEP issued a policy letter stating that limiting the duration of summer programs for students

with disabilities "...would violate the basic requirement that programs be designed to meet the individual needs of each child" (Letter to Baugh, 1987). Requirements for specifying the content and duration of ESY programs were also strongly stated in the *Ruesch v. Fountain* decision. The court mandated "...individualized determinations of the number of weeks, days per week, and hours per day that each student receiving ESY should be provided."

ESY does not necessarily involve a strict continuation of the child's school-year program, and it can include a variety of services as long as they all fall within the definition of special education (Rapport & Thomas, 1993, p. 25). The content of a child's ESY program must be determined on an individual basis. In the policy letter quoted above, OSEP responded to another question about ESY: "May LEAs refuse to provide related services including transportation and therapy services to students who are in need of and receiving such services during the regular school year?" Although the response was "No," the explanation added, "However, to the extent that the extended placement differs from the regular school placement, the need for related services may also differ in the extended school year placement." This statement clarified that ESY programs for students with disabilities are different from summer programs for the general school population, and reinforced the requirement that each child's ESY program be designed on the basis of that child's special needs.

STATE ESY REGULATIONS

A reading of the attached excerpts from state laws and regulations reveals an extensive diversity of requirements. They range widely in terms of length, content, and specificity. Some states (e.g., Alabama) briefly cover the basic requirements as contained in legislation and case law. Others (e.g. Kansas, North Dakota Utah) are much more prescriptive, with detailed procedures for school districts to follow. Some state regulations have unique features. For example, Iowa makes a clear distinction between ESY and summer school; Texas defines the "period of recoupment."

As OSEP monitors states' implementation of IDEA, ESY programming is often one of the non-compliance findings. In the 1994-95 school year, OSEP cited nine of 14 states in the area of ESY services (Briand, 1995). Often, the finding relates to an improper practice in a school district rather than a violation in the state's regulations or policies.

Special education costs continue to be a problem for states and districts, and the provision of ESY services is intensifies the problem. A study done in 1990 revealed that funding for ESY services was the most frequent concern expressed by states (Katsiyannis, 1990). Although states may not refuse to provide ESY because of inadequate financial resources, the problems posed by limited funding are escalating in the face of legislative

pressures such as block grants, budget reductions, and tax reforms that are under serious consideration at the national and state levels as this analysis is being written.

CONCLUSIONS

Case law and policy interpretations by OSEP have firmly established the requirement that ESY services be provided for students with disabilities when the IEP team decides that the child's individual needs warrant such additional programming. To meet the legal requirements, Rapport and Thomas (1993, p. 25-26) suggest that educators need to ask a number of questions to determine need, appropriateness, type, extent, and continuation decisions for ESY services. Among those questions are:

- Is the child's current educational program based on individual needs?
- Have the nature and severity of the child's disability been considered among other factors in determin ng eligibility for ESY?
- Is the child receiving "some educational benefit" from the program?
- Has the child experienced regression, or is the child likely to experience regression, during an interruption in programming? If so, is the regression sufficiently significant as to support the inclusion of ESY in the IEP?
- Is the child likely to recoup any losses within an acceptable period of time?
- Is the child failing, or likely to fail, to meet short-term objectives? If so, would an extended program assist in meeting goals and objectives?
- What types of ESY instruction and/or related services are appropriate for the child?
- For what period of time will ESY be provided?

Issues involved in the provision of ESY services are complex and, for the most part, based on case law derived from curt decisions in various jurisdictions of the country. Although specifics of the ESY services may vary, the basic requirement flows from the entitlement of students with disabilities to a free, appropriate education. As such, ESY will continue to be a major issue in special education. It is hoped that the summary and state regulation excerpts contained in this document assist administrators and policymakers in meeting their obligations in this area.

REFERENCES

Baltimore (MD) City Public Schools (1986). *EHLR 352:185.*

Battle v. Commonwealth of Pennsylvania (1980). *EHLR* 551:647.

Briand, X. (1995). Monitoring reports fault state summer school rules. *Education Daily, 28*(40), (March 1), pp. 1,3.

Katsiyannis, A. (1991). Extended school year policies: An established necessity. *Remedial and Special Education, 12* (1), p. 24-28.

Letter to Anonymous [Transition/Part H to Part B] (1993). *22 IDELR 980.*

Letter to Baugh (1987). *EHLR 211:481*

Olmi, D. J., Walker, D. W., & Ruthven, A. J. (1995). Extended school year services: Prediction, description, and impact of judicial precedence. *Journal of Special Education, 29* (1), p. 72-83.

Rapport, M.J. & Thomas, S.B. Extended school year: Legal issues and implications. *Journal of the Association for Persons with Severe Handicaps, 18* (1), p. 16-27.

Ruesch v. Fountain (1994). *21 IDELR 1107.*

EXCERPTS FROM STATE REGULATIONS

States Included:

Alabama	New Hampshire
Alaska	New Mexico
California	North Dakota
Iowa	Oklahoma
Idaho	Pennsylvania
Kansas	South Carolina
Louisiana	South Dakota
Maine	Texas
Maryland	Utah
Massachusetts	West Virginia
Minnesota	Wyoming

ALABAMA - REGULATIONS FOR SP.ED.

> (a) Extended School Year (ESY). The length of a program for a student with disabilities may not be limited to the regular school term/year if significant regression, caused by an interruption in educational services, renders it impossible or unlikely that the student will retain critical skills even after an appropriate recoupment period.
>
> 1. Provision of ESY services shall be considered by the IEP Committee when requested by a member of that committee or when the unique educational needs of the student with disabilities make such considerations appropriate.
> 2. ESY services shall be based on the individual needs of the student with disabilities and not by area of disability.
> 3. Consideration for ESY services shall be limited to the goals and objectives identified in the student's current IEP. This rule shall not be construed to limit the IEP Committee's authority to determine whether ESY services are necessary to ensure that a student receives a free appropriate public education.
> 4. ESY services shall provide for the maintenance of those skills identified as critical by the IEP Committee and will not necessarily duplicate all of the services contained in the current IEP. Services are not to be provided simply because a student would acquire some benefit from them or gain new skills.
> 5. ESY services shall be provided only when determined by the IEP Committee to be a necessary component of a student with disabilities' free appropriate public education and shall not be confused with, or considered the same as optional fee-based summer school or enrichment programs.
> 6. The determination of need for ESY services shall be limited to a period not to exceed one year and shall not address possible future educational service break needs.
>

ALASKA-STATE PLAN FOR IDEA-B

> Section 12. Extended school year
> For a district to meet the needs of some students with a disability, it may be necessary to provide special education and related services that extend beyond the regular school year, although few students with a disability need extended year services. Provision of extended school year services for one year does not mean that students need such services each year.
>
> Purpose of Extended School Year Services
> The purpose of extended school year services is to prevent regression relative to previously learned skills which cannot be recouped in a reasonable length of time, when assessed and demonstrated recoupment capacity is present. Extended school year services for special education students provide a different focus from general summer school programs. Extended school year services provide for an extension of the programming from the regular school year, as identified in the IEP
>
> Definitions
> Regression - a reversion to a lower level of functioning, as evidenced by a decrease in the performance level of previously attained skills which occurs as a result of an interruption in educational programming.
>

> Recoupment - the ability to regain or recover the level of skills attained prior to interruption of programming.
>
> Regression/recoupment disability - the demonstration of regression beyond a reasonable recoupment period, for which there is assessed and demonstrated recoupment capacity.
>
> General Criteria and Eligibility
> A regression/recoupment disability provides the basic premise for establishing criteria and eligibility standards for extended year services . The regression/recoupment disability shall be relative to the student's current IEP instructional goals and objectives and his or her current functioning levels. However, this is not to be construed to include any student who is simply not showing progress in the accomplishment of stated goals and objectives. Determination of the need for extended year services should be the result of a thorough analysis of formal and informal assessment data collected by the MDT.
>
> Procedures
> The decision of whether an extended school year is required, and if required how the extended school year should be structured, must be made at an IEP meeting.
>
> The period of extended year services should be defined annually on an individual basis, in consideration of each child's regression/recoupment disability. The length of the school day for extended year services should be defined by the district and should reflect the needs of the students in conformity with the IEP
>
> The district is responsible for providing transportation to and from the extended school year program when transportation is required as a related service.
>
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CALIFORNIA - REGULATIONS FOR SP.ED.

> 3043. Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program pursuant to subsection (f).

> (a) Extended year special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year .

> (b) Individuals with exceptional needs who may require an extended school year are those who:

> (1) Are placed in special classes or centers; or

> (2) Are individuals with exceptional needs whose individualized education programs specify an extended year program as determined by the

individualized education program team.

> (c) The term "extended year" as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term "academic year" as used in this section means that portion of the school year during which the regular day school is maintained, which period must include not less than the number of days required to entitle the district, special education services region, or county office to apportionments of state funds.

> (d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays. For reimbursement purposes:

> (1) A maximum of 55 instructional days excluding holidays, shall be allowed for individuals in special classes or centers for the severely handicapped; and

> (2) A maximum of 30 instructional days excluding holidays, shall be allowed for all other eligible pupils needing extended year.

> (e) A local governing board may increase the number of instructional days during the extended year period, but shall not claim revenue for average daily attendance generated beyond the maximum instructional days allowed in subsection (d)(1) and (2). (f) An extended year program, when needed, as determined by the individualized education program team, shall be included in the pupil's individualized education program.

> (g) In order to qualify for average daily attendance revenue for extended year pupils, all of the following conditions must be met:

> (1) Extended year special education shall be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided, but not less than the minimum school day for that age unless otherwise specified in the individualized education program to meet a pupil's unique needs.

> (2) The special education and related services offered during the extended year period are comparable in standards, scope and quality to the special education program offered during the regular academic year.

> (h) If during the regular academic year an individual's individualized education program specifies integration in the regular classroom, a public education agency is not required to meet that component of the individualized education program if no regular summer school programs are being offered by that agency.

> (i) This section shall not apply to schools which are operating a continuous school program pursuant to Chapter 5 (commencing with Section 37600) of Part 22, Division 3, Title 2, of the Education Code.

>

> [Authority cited: Section 56100(a) and (j), Education Code] [Reference: Sections 37600, 41976.5 and 56345, Education Code; and 34 CFR 300.346]

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IOWA - REGULATIONS FOR SP.ED.

> 41.10(8) Extended year. The school district shall ensure that rules pertinent to special education are observed when extended year special education programs are provided.

>

> 41.11(6) Extended year. The AEA shall ensure that rules pertinent to special education are observed when extended year or summer school special education programs are provided.

> 41.17(8) Extended year special education. To ensure provision of a free, appropriate education, pupils requiring special education shall be provided extended year special education (EYSE) in identified critical

skill areas when the special education instructional program, support services, or both, in which the pupil is regularly enrolled are not in session for periods of three or more consecutive weeks. EYSE may include special education instructional or support services or both. A review of all pupils receiving special education shall be conducted by the multidisciplinary team for the purpose of identifying those pupils who may require EYSE in accordance with this rule. The parents of these pupils shall be provided written notice of their child's potential need for EYSE and of procedures to be followed in making a final determination. The parents of these pupils shall also be provided written notice of the multidisciplinary team's subsequent determination regarding the pupil's need for EYSE. This notice shall occur no later than 60 days prior to the interruption of special education in which the pupil is regularly enrolled. In limited cases where 60 days notice is impracticable (i e., late enrollment; verifiable change in educational program needs), this notice shall be provided with expediency. Should the parents of the pupil wish to appeal the decision regarding extended year special education, an affidavit of appeal shall be filed pursuant to rule 41.33 within 15 calendar days of receipt of the multidisciplinary team's decision. This requirement is necessary if the appeal is to be heard in time for the implementation of extended year special education during the period for which the request was made. Determination of the need for EYSE for each pupil shall be made by the multidisciplinary team based on empirical and qualitative data collected by the multidisciplinary team. A pupil shall be provided EYSE if, in the educational professionals' interpretation of the data, either of the following conditions is present:

> a. Failure to maintain an acquired critical skill, as a result of an interruption of special education instruction or support services in a critical skill area, to the extent that a period of reteaching of nine or more weeks will be required to regain previous competence. In these cases, EYSE programming shall be designed to provide for maintenance rather than continued development of the skills identified.

> b. Rare and unusual circumstances which will result in the loss or a severe limitation of the pupil's capacity and potential to acquire a critical skill. In these cases, EYSE shall provide for the maintenance of the critical skill and may also provide for the continued development or acquisition of a critical skill to prevent the anticipated loss or limitation. Critical skills shall be determined at the time of the development of the IEP, shall be appropriate for the pupil, given the pupil's ability to acquire the selected skill, and shall be a priority for developmental and age appropriate growth.

> Determination of the need for EYSE shall be made only for the immediate period of interruption. The provision of EYSE for the immediate period does not imply that EYSE will be required for subsequent periods in the absence of a finding to that effect by the multi-disciplinary team.

41.17(9) Summer school. Summer school is not an extended year program as described in 41.17(8). Summer school is programming not required for an appropriate program and is not defined in the IEP.

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IDAHO - REGULATIONS FOR SP.ED.

> h. School districts shall provide extended school year services (beyond the regular school year) for children with disabilities who qualify for such services. Districts shall apply State Department of Education guidelines concerning extended school year services in determining eligibility of the child with disabilities. (05-17-93)

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> 10. Statement of Services Needed. LEAs are legally bound to designate in the IEP all of the special education and related services needed by the student as determined by the student's current evaluation including extended school year services and transportation. The special education and related services included in the IEP must be provided.
>
> 5. Extended School Term. The extension of an IEP beyond the school calendar adopted by the local school board should not result in a more restrictive placement unless recommended by the IEP committee. However, the increased isolation of an instructional program during a period of time when students with no disability are not attending school does not violate any least restrictive environment requirement.

> EXTENDED SCHOOL TERM
>
> Introduction
> Neither the law nor the regulations under Individuals with Disabilities Education Act (IDEA) specify the length of the school term. In an attempt to determine the requirements for an extended school term, the courts have considered the intent of the Act. The consensus of the court cases mandates that the needs of each child and youth with a disability must be considered individually to determine if the student requires the provision of extended school term services. In Kansas, these services would be provided during the summer in addition to the minimum of 181 days or 1,086 hours during the 1992-1993 school year, a minimum of 1,098 hours in the 1993-94 school year, and not less than 1,116 school hours in each school year commencing after June 30, 1994, as required by Kansas law or the local school board's adopted calendar. The individualized education program (IEP) team will determine the need for extended school term services based on the significant educational regression of the student. Using this criterion, students with giftedness would not be eligible for these services; however, this does not preclude the local education agency (LEA) from providing summer school for students with disabilities and giftedness who do not meet this criterion.
>
> Definitions
>
> 1. Extended school term services means State approved special education programs, alternative instructional arrangements, and/or related services made available to students with disabilities beyond the completed minimum of 181 days or 1,086 hours during the 1992-1993 school year, a minimum of 1,098 hours (kindergarten and early childhood special education, 457.5 hours) in the 1993-94 school year, and not less than 1,116 school hours in each school year (kindergarten and ECSE, 465 hours) commencing after June 30, 1994, as required by State statutes or the school calendar adopted by the local school board.
>
> 2. Significant loss of previously acquired skills means that a student will regress, as a result of a break in educational programming, to the extent that it is unlikely that the student will recoup, in forty-five school days, previously acquired critical skills/behaviors.
> Policies
>
> 1. IEP Team Responsibility. The IEP team is responsible for determining if any student with disabilities requires an extended school term in order for that student to receive an appropriate education. The student's IEP will indicate which extended school term services will be

provided.

> Battle v. Pennsylvania, 1980

> 2. Considerations in Determination of Need. The IEP team, in determining whether extended school term services are essential for a student with disabilities to receive an appropriate education which includes the furthering of self-sufficiency, personal independence, and autonomy, shall consider, at a minimum, the following factors:

> a. the indefinite or permanent nature of the student's disability;

> b. severity of the student's disability;

> c. extent to which an interruption of the student's instructional program during the summer recess is likely to produce a significant loss of previously acquired skills which cannot be recouped within the first 45 school days of the next school term;

> d. extent to which an interruption in the provision of related services during the summer recess would significantly and adversely affect the student's ongoing ability to benefit from special education;

> e. the least restrictive environment in which the student can successfully participate;

> f. continuity of the student's program (i.e., frequent interruptions due to illness or lack of service due to staff vacancies); and

> g. unavailability of appropriately trained staff during the regular school term.

> The student's failure to achieve any or all of the instructional goals and objectives stated in the student's individualized education program (IEP) will not be the sole factor to determine the need for extended school term services.

> Lee v. Thompson, 1983

> 3. Compensation for Inadequate Services. The provision of extended school term services is an acceptable compensatory option for providing services to students with disabilities where access to appropriate services has been limited.

> 34 CFR 300.304

> 4. Due Process Rights. The determination for and provision of extended school term services is a special education action which is subject to all due process rights and procedures.

> 34 CFR 300.500 K.S.A. 72-972
> 34 CFR 300.504
> 34 CFR 300.505

> 5. Timeline. Determination of the need for an extended school term will be made only for the subsequent summer following the school term and does not imply that the provision of an extended school term will be required for following summers.

> 34 CFR 300.346(a) K.A.R. 91-12-41(b)(f)(2)

> Procedures

> 1. Considerations in Determining Need for Extended School Term. The individualized education program (IEP) team should consider the following questions to determine the need for an extended school term program:

> a. Is a significant regression anticipated if extended school term services are not provided?

> The local education agency (LEA) is not required to provide extended services only because the student will benefit from such a program. Instead, the IEP team should determine if the regression experienced by this individual student will significantly affect her/his maintenance of skills/behaviors.
>
> b. How much anticipated time will be required to recover the skills lost because of regression?
>
> Before the LEA is required to provide extended school term services, the IEP team must determine that more than 45 school days will be required to return the student to the former level of achievement because summer instruction was not provided.
>
> c. What is the nature and severity of the disability(ies)?
>
> Each student's needs must be considered individually. Students with more severe disabilities and who are removed from general education more than 60 percent of the time are more likely to be affected by the loss of extended school term services. This point, however, is only one factor for consideration. When a student's disability(ies) requires a highly structured program, cessation of services usually results in regression.
>
> d. Are there instructional areas or related services needed which are crucial in achieving self-sufficiency and independence?
>
> Particular consideration for extended school term services should be given to students who need instruction in such self-help skills as dressing or eating, or who need continued structure to develop behavior control.
>
> 2. Information Needed to Support Decision. The IEP team should use the following information and data in determining the need for extended school term services:
> a. teacher assessment of the student's success with various instructional interventions;
> b. criterion-referenced and standardized test data;
> c. health and health-related factors, including physical and social/emotional functioning;
> d. past educational history, as appropriate, including any extended school term services;
> e. direct observation of the student's classroom performance;
> f. individualized education program (IEP) goals and objectives;
> g. student performance (pretest and posttest data);
> h. behavior checklists; and
> i. parent interviews and student interviews where appropriate.
> 3. Consideration of Student Needs. The determined educational needs of the individual student will guide the IEP team in deciding:
> a. scope of the special education instructional services including the duration and content of the program,
> b. which current goals and objectives will be addressed to maintain present skills/behaviors,
> c. implementer(s) of the services,
> d. what related services will be made available, and
> e. if contracting with other local education agencies (LEAs) or private agencies is needed.
>
>

LOUISIANA - STATE PLAN FOR IDEA-B

> 22. Extended School Year Program
>
> Each application shall include an assurance that the school system shall determine students eligible for extended school year program (ESYP) services and provide the ESYP services in accordance with SDE policies, procedures, and guidelines.
>

MAINE - REGULATIONS FOR SP.ED.

> 5.11 Extended School Year Services
> The purpose of extended school year services is to maintain skills which are at risk of being lost due to excessive regression and recoupment. Pupil Evaluation Team determinations to provide special education beyond an administrative unit's normal school year shall be made on an individual basis and based on the probability that the student is at risk of losing skills previously mastered and unable to recoup those skills within a reasonable period of time. Extended school year services shall be a part of the student's Individualized Education Program.
> Recommendations for extended school year services shall be determined by the P.E.T. based on one or more of the following factors:
> 1. The nature and severity of the student's impairment; 2. Whether the student's IEP contains goals and objectives which are necessary to attain self sufficiency and independence from caregivers; 3. Whether the student is failing or likely to fail to achieve IEP objectives due to an interruption in services; 4. The extent of regression caused by an interruption in educational programming; and, 5. The rate of recoupment following an interruption of services;
> The PET may determine a need for extended school year services based on a prospective determination of the likelihood of excessive regression and limited recoupment. Such a professional judgment shall not require that the student demonstrate an actual loss or failure to recoup previously learned skills in a timely manner.
>
>

MARYLAND - REGULATIONS FOR SP.ED.

> (1) "Extended school year services" means an individualized extension of specific services beyond the regular school year provided as part of a free, appropriate public education in accordance with the student's individualized education program for students exhibiting the need for special education, related services, or both, beyond the regular school year.
>
>
> (3) Extended school year services must be provided pursuant to a properly developed individualized education program as soon as possible and in accordance with requirements set forth in Regulation .10 of this chapter.
>

MARYLAND - STATE PLAN FOR IDEA-B

> b. In accordance with COMAR 13A.05.01.09G, additional review of the student's IEP and placement may occur at the request of the student's parent(s) and shall occur at least annually. Such review will be conducted to determine whether:
>
> (1) The student has achieved the goals set forth in the IEP.
> (2) The educational program should be specifically modified to render it more suitable to the student's needs.
> (3) Education in a less restrictive environment can be achieved satisfactorily with the use of supplementary aids and services.
> (4) The student is in need of extended school year (ESY) services:
>
> (a) In making its determination whether to provide ESY services, the ARD Committee shall consider whether there is a likelihood of substantial regression of critical life skills (i.e., any skill determined by the IEP team to be critical to the student's overall educational progress) caused by the normal school break and a failure to recover these lost skills in a reasonable time.
>
> (b) ESY services must be provided pursuant to a properly developed IEP as soon as possible but no later than 30 school calendar days after its development, and in accordance with requirements set forth in COMAR 13A.05.01.09G(3).
>
> Parents are notified of the availability of ESY services. (COMAR 13A.05.01.08E(4))

MASSACHUSETTS - REGULATIONS - SP.ED.

322.18 The number of days per year on which the child's program should be provided, with justification if the number differs from the number of days in the regular school year. The number of days may be extended beyond the regular school year if the TEAM determines that the child will substantially regress without an extended special education program.
>
> 322.18(a) Extended year special education programs and related services shall be of the same type as those provided for the child in the regular school year, but may be in a different facility as long as the facility meets state and local fire and safety requirements and the staff providing special education programs and services under this paragraph meet the professional standards set out in 603 CMR 7.00, Certification of Education Personnel. Camping and recreational programs shall not be construed as extended year special education programs and related services under this paragraph.
>
>

MINNESOTA - REGULATIONS FOR SP.ED.

> G. Provide extended school year services for those pupils when it is determined:
> (1) that the pupil will experience "significant regression" in the absence of an educational program;

> (2) the time required to relearn the skills lost is excessive; or
> (3) the effects of the breaks in programming are such to prevent the student from attaining the state of self-sufficiency that the student would otherwise reasonably be expected to reach.
> The amount and type of service for summer must be appropriate to maintain performance on IEP goals.
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NEW HAMPSHIRE - REGULATIONS FOR SP.ED.

> Ed 1111. INDIVIDUALIZED EDUCATION PROGRAMS FOR EXTENDED SCHOOL YEAR PROGRAMMING
>
> The local education agency shall provide an extended school year program to any student with educational disabilities for whom it can be demonstrated by a preponderance of evidence that interruption of the student's special education program or educationally related services would have the effect of negating the benefits of the student's standard school year program.
>
> The local education agency shall ensure that the program for a student with educational disabilities is appropriate, not only as to the type of program, but also to the duration of the same.
>
> The provision of special education services for a period other than the standard school year shall be considered an educationally related service and may involve modification in the services of the individualized education program in terms of physical location, such as geographic location or duration, including hours, days and/or weeks.
>
> An extended school year program shall include the number of days or weeks appropriate to the individual educational needs of the student with educational disabilities and shall be made on an individual basis.
>
> The procedure for determining the duration of a program other than the standard school year shall be as follows:
>
> The individualized education program/placement team shall make a final decision regarding the provision of an extended school year program by April 30 of the current year but no less than 60 days prior to proposed start date of the extended school year program unless an extension or a specific period of time is granted in writing by the parents.
>
> The individualized education program/placement team shall base its recommendations upon reliable and comprehensive information about the student and the likelihood that the student will suffer harm or regression significant enough to negate the benefits of the student's school year special education program.
>

> The special education individualized education program/placement team shall provide the parents written notice of its decision regarding the provision of extended school year programming. The notice shall conform with the requirements of Ed 1125.03 of these rules.
>
> All rights, guarantees, and procedures as outlined in Chapter Ed 1100 shall be afforded all parties, including students with educational disabilities, the parent, legal guardian, surrogate parent, and school districts during the duration of the individualized education program for extended school year programming.
>

NEW MEXICO - REGULATIONS FOR SP.ED.

> (C) EXTENDED SCHOOL YEAR: Each public agency must publish procedures to make extended school year service(s) available to those children with disabilities who meet eligibility criteria. The purpose of an extended school year is to prevent or slow severe skill regression caused by an interruption of special education service(s) during extended periods when school is not in session. The purpose is not to enhance the present levels of educational performance exhibited by children with disabilities at the end of the regular school year. The need for extended school year service(s) is based on a construct of skill regression and a child's limited capacity for recoupment. An extended school year may be provided only when it is determined that a child might regress to such an extent in a critical skill area that recoupment of such skill loss would require an unusually long period of time to recoup or make it unlikely or impossible to recoup the present level of educational performance. When it is determined by a multidisciplinary team that a child is in need of extended school year service(s), the service(s) will be proposed at no cost to parents. Extended school year service(s) will be provided only under the auspices of an IEP. Eligibility for extended school year service(s) will be determined on an individual-by-individual basis. Extended school year guidelines and practices will not be invoked which have an effect of considering children with disabilities as an exceptional class.

NORTH DAKOTA - REGULATIONS FOR SP.ED.

11.0 EXTENDED SCHOOL YEAR
>
> 11.1 Introduction. The Individuals with Disabilities Education Act (IDEA) specifies that an individual determination of educational needs for a student with disabilities occurs in order to assure an appropriate educational program. The practice of not considering or prohibiting consideration of more than a normal school year or school day necessarily conflicts with the intent of the law. The purpose of extended school year (ESY)/extended school day (ESD) services is to prevent regression of previously learned skills which, when lost, cannot be recouped in a reasonable length of time and to maintain IEP goals and objectives. A separate IEP should be developed for ESY/ESD; the current IEP is used to monitor the maintenance of mastered skills. The curriculum and methodology used should be compatible with that specified on the current IEP.
>
> According to the Individuals with Disabilities Education Act, 20 USC

1401 et seq., students identified as having disabilities and needing special education and related services may be entitled to an extended school year/day program. The basis for this interpretation of IDEA language is not explained in regulation, but is drawn from court interpretation of "free appropriate public education". A student's eligibility for FAPE and therefore for an ESY/ESD program must be determined annually and on an individual basis. 20 USC 1400(c) FAPE, 20 USC 1401(a)(c8) FAPE, 504 (29 USC 794 34 CFR 104.33(b)) Appropriate Education.

>

> EXTENDED SCHOOL YEAR SERVICES ARE ALSO AUTHORIZED UNDER NDCC 15-59-02. 1.... The legislative assembly recognizes that a student with disabilities whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the disability. All summer programs attended by these students must have approval of the Department of Public Instruction before receiving foundation aid or state special education reimbursement.

>

> IDEA (P.L. 101-476) provides that all students with disabilities are entitled to a "free appropriate public education." To have meaningful access to a public education, some students with disabilities may require services or types of educational programs that are different from those needed by students who are not disabled . Each student with disabilities has unique learning characteristics and needs. With these factors in mind, a free appropriate public education, for certain students, may necessitate a program of special education and related services in excess of the normal school year and school day.

>

> It should not be assumed that ESY/ESD services are only for students with severe or profound disabilities. Extended school year does not mean traditional summer school programs which are made available to all students; it means specialized instruction that assists in preventing serious regression of previous learned skills.

>

> In Armstrong v. Kline (E.D. Pennsylvania, 1979) the court stated:

>

> "The skill regression during the summer months for some students, coupled with their limited recoupment ability, is such that their basic educational needs cannot be met in a traditional 180 day program."

>

> In Alamo Heights v. State Board of Education (1986) the court held the following standard:

> "If a student will experience severe or substantial regression during the summer months in the absence of a summer program, the student with disabilities may be entitled to year round services. The issue is whether the benefits accrued by the student during the regular school year will be significantly jeopardized if he/she is not provided an educational program during the summer months."

>

> Recently, in Johnson v. Bixby ISD 4 (10th Circuit, Tulsa County, OK, 1990) the court confirmed: "Regression-recoupment is not the only measure used to determine the necessity of an ESY/ESD program. Other factors include "the degree of impairment, the ability of the child's

parents to provide the educational structure at home, the child's rate of progress, his or her behavioral and physical problems, the availability of alternative resources, the ability of the child to interact with non-disabled children, the areas of the curriculum which need continuous attention, and the child's vocational needs."

> Several recent court decisions have recognized the school's duty to offer extended school day services. Garland Independent School District v. Wilks, 1987 and Burke County Board of Education v. Denton, 1990, both affirmed the need for an extended school day of more than six and a half hours for certain students.

11.2 Eligibility.

> 11.2.1 Students eligible for ESY Services are:

> 11.2.1.1 those students eligible for special education for whom maintenance of their level of self-sufficiency and independence is unlikely, after an interruption of services, in view of their handicapping conditions, without ESY services; or

> 11.2.1.2 those students eligible for special education who require an extended school year to remain in their current least restrictive environment placement;

> 11.2.2 The IEP team must document that a delay or break in the provision of special education and related services would result in an education program of little benefit to the student. Despite the lack of definitive documentation, a student who meets the criteria of 11.2.1.1 or 11.2.1.2 above may not be denied ESY services if the IEP team determines the need for such services.

> 11.2.3 Determining the need for ESY/ESD programming in excess of the normal school year/day must be made on an individual basis. Eligibility rests with the IEP team which should be composed of the following individuals:
> Parent(s), Special Education Teacher(s), School Supervisor/Designee,Student (when appropriate), Regular Teacher(s), Others (as appropriate)

> 11.2.4 The following procedures should be implemented when determining eligibility for ESY/ESD services:

> 11.2.4.1 All students with disabilities who have current IEPs will be considered for ESY/ESD services at least annually.

> 11.2.4.2 Eligibility should be based upon data and discussion of the IEP team and not determined by a formula. Many regression/recoupment formulas have been invalidated because they were found to lack individualization. Each decision should occur retrospectively or prospectively and be based on the unique needs of the student.

> 11.2.4.3 The primary elements to be used in determining the need for ESY/ESD should include:

> a. the likelihood of significant regression, and
> b. the rate of probable recoupment of skills,
> c. recent court decisions (Johnson v. Bixby, Circuit, 1990)
>
> (1) Degrees of Impairment. Although children may have any handicapping condition or combination of handicapping conditions, children with certain disabilities, which require consistent, highly structured programs, may be predisposed to regression when their programs are interrupted. These same children may also have limited recoupment capacity. Such handicapping conditions include childhood autism, severe emotional disturbance, severe or profound mental retardation, degenerative impairments with mental involvement, and severe multiple handicaps. As part of the annual IEP review process of each child who has been diagnosed or described as having one of the above impairments, the IEP team shall consider the child's need for continuous educational programming in excess of 180 days per year.
>
> (2) Severity of Impairment. Although "vulnerable" children with limited recoupment capacity can exist among the more moderately impaired, they are more likely to be among the more severely handicapped. The most severely emotionally disturbed children, for example, are more likely to revert to lower functioning levels or to exhibit inappropriate behaviors, such as extreme withdrawal, anxiety reactions, or fetishes which seriously interfere with learning, when their program is interrupted. For many of these children, each successive interruption in programming and consequential regression also reduces the child's motivation and trust and may lead to an irreversible withdrawal from the learning process. Severely or profoundly retarded children are more likely to have limited relearning capacity. Finally, these severely impaired students are most likely to have difficulty attaining the goals of self-sufficiency and independence from caretakers, and to need additional help and support to reach those goals.
>
> (3) Parents' ability to provide an educational structure at home. A parent or guardian may be unable to maintain a child's level during a break in programming because of the complexity of the program, time constraints, lack of expertise, or other reasonable reasons, and this factor is relevant to whether a child can be expected to regress. Also relevant to a parent's ability to maintain skills during interruptions in programming is the child's stage of mastery of crucial skills or behavioral controls as of the point of the interruption in programming.
>
> Where appropriate, school districts and/or intermediate units should consider offering parent training programs to help parents attempt to maintain their child's level during breaks in programming. School districts and intermediate units should also consider offering the provision of support services in the home, either directly or in cooperation with the Department of Public Welfare or Office of Mental Health/Mental Retardation, if such services will prevent the child's regression during a break in programming. School districts and intermediate units are free to utilize the resources of other public or private agencies in order to meet the child's needs, so long as there is no cost or financial liability to the child's parents or

guardians.

(4) Student's rate of progress. Just as every child learns, regresses, and recoups at different rates, he/she may also learn, regress, or recoup certain skills or behaviors at different rates than others, Certain skills or behaviors are particularly essential to meeting the goals of self-sufficiency . For example, basic self-help skills, such as toileting or eating, are essential for minimal independence; the development of stable relationships, impulse control and appropriate peer interaction is necessary for community living. Therefore, if a child would suffer a significant regression/recoupment loss in a skill or behavior which is particularly crucial to reaching the goal of self-sufficiency and independence from caretakers, the child requires continuous education programming in that skill or behavior area.

Another relevant factor is the extent to which the child has mastered and consolidated an important skill or behavior at the point when the program is broken since behaviors or skills which have not yet been generalized, mastered, and consolidated are more easily lost, a child is more likely to regress in that skill or behavior area if his/her programming is interrupted before mastery and consolidation have been achieved.

d. behavioral and physical problems;
e. availability of alternative resources (such as parks and recreation, YMCA programs, etc);
f. student's ability to interact with non-disabled students;
g. curriculum areas that need continued attention; and,
h. student's vocational needs.

11.2.4.4 The IEP team must document that a delay or break in the services of special education and related services would result in substantial regression and slower than normal recoupment of previously gained skills as stated on the IEP.

For example, it is the IEP team's responsibility to determine the areas a student is likely to regress, whether such regression is likely to be unusual in relation to that experienced by other student's and whether is likely that lost skills will be recouped in a reasonable amount of time. (Alper and Noei, 1987).

11.2.4.5 The IEP team is not required to demonstrate regression before ESY/ESD services are provided. If no empirical data is available on regression, the need may be shown by expert opinion or prospective criteria established by the IEP team. This opinion should be based upon an individual review of the student and should include the following data:

a. review of the achieved IEP goals and objectives;
b. observations and data from teachers, therapists, parents, and others having direct

contact with the student before and after breaks in educational programming;

> c. data and observations regarding the student's performance after long week-ends, vacations, and past summer breaks;

> d. assessment of information maintained on the student, including pretest and post test data;

> e. curriculum based testing, including pretest and post test data.

> f. other relevant factors.

>

11.2.4.6 ESY/ESD services should not be granted solely on the basis of the student with disabilities not achieving one or more IEP goals or objectives.

>

> 11.2.4.7 When determining eligibility for ESY/ESD services, the IEP teams must also review and consider related services. If related services are necessary for the student to benefit from extended school year special education, they must be provided.

>

> 11.2.4.8 New goals and objectives should not be added to a student's IEP for implementation of an ESY/ESD program. Services should emphasize the maintenance of existing skills as stated on the IEP.

>

> 11.2.4.9 If consideration of eligibility for ESY services was initiated by a request for such services by the parent, the district must provide written notice to the parent of the determination that a student is not eligible for ESY services. Such notice must meet the requirements for Prior Notice set forth at 34 CFR 300.505.

>

> 11.2.4.10 The written scheduling of the IEP team meeting must be accomplished in sufficient time to permit any party to exhaust administrative remedies prior to the beginning of the ESY program. Parents shall be informed of their rights and of procedures through which they may challenge the decision of the IEP team.

>

> 11.3 Program Considerations. The primary goals for all students requiring ESY services are to become as functionally independent as possible within the limits of their disabilities and to be maintained in the least restrictive environment appropriate to their needs. A program of special education and related services designed to maintain, in the least restrictive environment, the current level of a student's skills and behavior in areas identified as crucial in reaching self-sufficiency shall be developed by the student's IEP team.

>

> 11.3.1 The type and length of the program which a student requires is determined on an individual basis.

>

> 11.3.2 The requirements regarding placement in the least restrictive environment during the academic year apply to ESY/ESD programs. The placement should be based upon the IEP. There might be instances where summer placement might further isolate the student. If this is the case,

the IEP team should consider whether any of the following alternative placements are more appropriate for the student.

> 11.3.2.1 School based programs
>
> 11.3.2.2 Intraschool cooperative programs, example Chapter 1
>
> 11.3.2.3 Home-based programs-parents and/or itinerant staff
>
> 11.3.2.4 Cooperative programs with other agencies
>
> 11.3.2.5 Multi-system shared program
>
> 11.3.2.6 Contractual arrangements
>
> 11.3.2.7 Learning packages with staff monitoring
>
> 11.3.2.8 Transitional opportunities, example JTPA
>
> 11.3.2.9 Community based programs
>
> Documentation should be included that specifies the IEP team considered all possible options, starting with the least restrictive. Justification should be provided for the rejection of a least restrictive placement for a more restrictive placement.
>
> 11.3.3 The duties of IEP teams include:
>
> 11.3.3.1 identifying IEP goals and objectives related to an area of self-sufficiency which is required to maintain current placement. This may be done at the time the IEP is developed for the academic year;
>
> 11.3.3.2 indicating conditions or behaviors that may be exhibited in the educational environment or elsewhere, that, if not appropriately programmed for may cause regression for educators, other professionals, and parents;
>
> 11.3.3.3 reviewing the IEP to determine eligibility for ESY services. The team shall identify goals and objectives that are related to areas of self-sufficiency such as:
>
> a. areas essential for minimal independence:
> (1) muscular control;
> (2) toileting;
> (3) feeding and eating;
> (4) dressing.
> b. physical mobility;
> c. areas necessary for community living:
> (1) personal hygiene;
> (2) impulse control;
> (3) basic communication;
> (4) stable relationships as shown by interaction with peers and adults.
>
> 11.3.3.4 establishing and implementing on-going data collection processes for continuous monitoring of

student progress, including data to provide information about the following:

a. how often a review of previously introduced material is required;

b. whether the student demonstrates inconsistency in the mastery retention of skills;

c. critical stages reached by the student in mastery of skills related to areas of self-sufficiency;

d. whether the student requires a more intense rate of instruction than similar students with a like disability in order for progress to take place;

e. regression and recoupment periods for a student based on information from the IEP and evaluations of student performance in educational settings and the application of the following criteria:

(1) a reasonable recoupment period for a break planned by the educational agency for eight to twelve weeks is 40 instructional days, of three to four weeks is 10 to 14 instructional days, or two weeks is 6 instructional days;[All experience some regression of acquired skills. A 1986 study in Seattle schools revealed that students classified as non-disabled regressed by about 4% on tests from June to September and recouped this loss by approximately November (Tilley, Cox, and Stayrook, 1986).] exceptions to the number of days constituting a reasonable recoupment period may be granted on a case-by-case basis by the IEP team.

(2) sources of data for documenting regression and recoupment periods may include:

(a) achievement of goals on successive IEPs;

(b) progress reports maintained by educators, therapists, and others having direct contact with the student before and after interruptions in the education program;

(c) reports by parents of negative changes in adaptive behaviors over break periods;

(d) medical and other agency reports indicating degenerative-type difficulties which become exacerbated during breaks in educational programming;

(e) observations of educators and others;

(3) techniques to collect data for documentation may include:

(a) daily monitoring;

(b) behavior checklists, student self-assessments, parent assessments, and professional assessments;

(c) documented observations of the student;

(d) specific professional assignment

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evaluations.

> 11.3.3.5 retrieving, at specified intervals, data related to acquired skills and regression and recoupment;
>
> 11.3.3.6 transportation is a related service and must be offered if it is necessary for the student to benefit from special education.
>
> 11.3.3.7 qualifications for ESY one year does not guarantee services for succeeding years. ESY must be determined annually.
>
> 11.3.3.8 under the present funding authorities, there are two sources of funds to consider for ESY/ESD students: 1) state foundation aid funds combined with State special education funds for ESY and 2) Part B funds from the Individuals with Disabilities Education Act (IDEA). State foundation aid funds may be requested if the individual student's ESY program is at least 10 weeks. June through mid August and at least three hours per day. State special education funds may also be requested that will supplement the foundation aid funds at a rate of 60% of the excess costs after foundation aid is subtracted. Part B funds may also be used to provide ESY services. The school district may not use budgetary constraints as a reason not to provide ESY/ESD services to an eligible student.
>
> 11.3.3.9 although ESY/ESD is required only for those students with disabilities who have been determined eligible, the local school district can provide ESY programs to any or all students with disabilities. However, funding for such programs would be the responsibility of the school district.
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OKLAHOMA - REGULATIONS FOR SP. ED.

> Extended school year (ESY) services are defined as special education and related services which are provided by the LEA to eligible children with disabilities beyond the regular instructional year as a necessary part of a (FAPE) required by the IDEA. Each LEA is responsible for establishing an ESY policy and to provide ESY special education and related services summer programs to those children with disabilities who meet eligibility criteria established by the United States Court of Appeals, for the Tenth Circuit in 1990 and State law (70 O.S. 13-101, 70 O.S. 18-109.5). Please refer to the SDE publication, Technical Assistance Document: ESY Services for Children and Youth with Disabilities regarding necessary components of an ESY policy. Special education and related services must be provided through an ESY program when determined by the IEP team that a child has regressed, or is predicted to regress, to such a severe degree in a critical skill area that recoupment of such skill loss following the summer break in programming is unlikely or would require an unusually long period of time. Other factors to be considered in determining the need for ESY include, but are not limited to: the degree of the child's disability; the parents' ability to provide education in the home; the child's rate of progress; the child's needs for interaction with nondisabled peers and vocational training; and whether the requested services are an integral part

of a program for children with similar disabilities. Determination of eligibility for ESY services must be made on an individual basis and addressed appropriately on the IEP (refer to IEP Section). ESY for special education and related services summer programs is not to be confused with "optional extended school year" programs offered by school districts under State law (70 O.S. 1-109.1).

>

Extended school year (ESY) services may be appropriate for some children with disabilities who have received SoonerStart services. To determine eligibility for ESY services the IFSP and IEP teams (including family members) should meet and consider all pertinent information including background information, current evaluations, and information provided by SoonerStart.

>

> Comment: Determination of eligibility for ESY services must be made on an individual basis and addressed appropriately on the IEP (refer to IEP Section). ESY for special education and related services summer programs is not to be confused with "optional extended school year" programs offered by school districts under State law (70 O.S. 1-109.1).

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OKLAHOMA - STATE PLAN FOR IDEA-B

> Special education and related services are provided to all eligible children with disabilities. These include:

> ...Children with disabilities who meet eligibility requirements for Extended School Year (ESY) services as defined by the local school district's policy. ESY services may be defined as a special education service(s) which is provided by an agency to eligible children with disabilities beyond the regular instructional year as a necessary part of a free appropriate public education required by the Individuals with Disabilities Education Act (IDEA), P.L. 101-476 (see 34 CFR 300.300). ESY services must be developed and documented through the Individualized Education Program (IEP) process and be provided at no cost to parents for children determined to be eligible for such services by the IEP team. ESY Policy must be attached.

>

>

> 6.5 The individualized education program, which must precede placement, includes as a minimum the following:

> ...S. Consideration of Extended School Year (ESY) eligibility, as appropriate.'

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PENNSYLVANIA - STATE PLAN - IDEA-B

> In regard to determination of student's need for extended school year, the regulations provide:

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> (a) An eligible student with severe disabilities is entitled to an appropriate educational program in excess of 180 days per year if regression caused by interruption in educational programming and limited recoupment capacity renders it unlikely that the student will attain a level of self-sufficiency and independence from caretakers that would be expected in view of the student's disability.

> (b) To provide an appropriate program, the IEP team shall consider annually the needs of eligible students with severe disabilities for extended school year programming. In making this determination the IEP team shall rely on criteria in Chapter 342 (relating to special education services and programs) and applicable judicial decisions. (14.34; Appendix B)

Although this regulation refers specifically to students with severe disabilities, it is the policy of the Department that any student with a disability may be entitled to an extended school year (ESY) as a part of that student's appropriate education. While students with severe disabilities appear to be most at risk to have regression with limited recoupment capacity, any student is eligible for ESY consideration when regression caused by interruption in educational programming and limited recoupment capacity renders it unlikely that the student will attain a level of self-sufficiency and independence from caretakers that would be expected in view of the student's disability. Eligibility is to be determined by the IEP team with an assessment of the student's level of regression and recoupment. The range of skills to be considered for ESY programming include basic self care skills, academic skills, functional life skills, and vocational skills.

PDE intends to issue a Basic Education Circular and render technical assistance over the period of this plan to ensure proper determinations are made in regard to ESY services.

SOUTH CAROLINA-STATE PLAN-IDEA-B

> (r) Statement that Extended School Year (ESY) services have been discussed. If ESY program/services are deemed necessary by the IEP committee, an ESY addendum must be incorporated into the IEP and must include:

> short-term objectives form the student's current IEP which will be continued during the extension of the school year

> the type of special education and related services (if any) to be provided, the location where the services will be delivered, the amount of time to be spent in special education or related services, and the projected beginning and ending dates of the extended services

> transportation, if necessary.

SOUTH DAKOTA - REGULATIONS FOR SP.ED.

> 24:05:25:26. Extended school year authorized. The district shall provide special education or special education and related services to eligible children if the placement committee determines that a child will experience significant regression of previously learned skills without the provision of such services to the extent that the child will be unable to regain the skills within a reasonable time.

> An IEP pursuant to chapter 24:05:27 shall be developed by the placement committee and implemented with informed parental consent. The placement committee shall determine the length of the school day and duration of extended school year services based on the individual child's

needs.

> Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993.
> General Authority: SDCL 13-1-11, 13-1-12, 13-37-1.1, 13-37-14.
> Law Implemented: SDCL 13-37-1.1, 13-37-14.
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TEXAS - REGULATIONS FOR SP.ED.

> (f) Extended year services (EYS) are defined as individualized instructional programs beyond the regular school year for students who are enrolled in a school district's special education program.

(1) The need for EYS must be determined on an individual student basis by the ARD committee.

> (2) The need for EYS must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation shall demonstrate that in one or more critical areas addressed in the current IEP objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable time period. Severe or substantial regression shall mean that the student has been, or will be, unable to maintain one or more acquired critical skills because of the absence of EYS.

> (3) The reasonable time period for recoupment of acquired critical skills shall be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, EYS may be justified without consideration of the time period for recoupment of such skills. In any case, the time period for recoupment shall not exceed eight weeks.

> (4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following unplanned occurrences during the first eight weeks of the next regular school year:

> (A) placement in a more restrictive instructional arrangement;

> (B) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;

> (C) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or

> (D) loss of access to on-the-job training or productive employment as a result of regression in skills.

> (5) If the district does not propose EYS for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss EYS pursuant to ^U89.229 of this title (relating to Notice Requirements and Complaint Procedures).

> (6) If a student for whom EYS was considered and rejected loses critical skills because of the decision not to provide EYS, and if those skills are not regained after the reasonable time period for recoupment, the ARD committee shall

reconsider the current IEP if the student's loss of critical skills interferes with implementation of the IEP.

> (7) For students enrolling in a district during the school year, information from the prior school district as well as information collected during the current year may be used to determine the need for EYS.

> (8) The provision of EYS is limited to the educational needs of the student and shall not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student shall be denied EYS because that student receives care and treatment services under the auspices of other agencies.

> (9) Districts are not eligible for reimbursement for EYS provided to students for reasons other than those set forth in this section.

> Source: The provisions of this ^U89.235 adopted to be effective June 19, 1991, 16 TexReg 3040; amended to be effective April 13, 1994, 19 TexReg 2198.

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UTAH - REGULATIONS FOR SPECIAL EDUCATION

> 7. Extended School Year (ESY) must be considered as a program option to maintain the critical skills of those students who qualify according to the ESY section of these Rules, Rule IV.S.).

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> IV. S. Extended School Year Services. The state standards which are applicable to the provision of extended school year services, including definitions, are contained in this section.

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> 1. Definitions are as follows:

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> a. "ESY services" means extended school year services: special education and related services which are provided to eligible students during the period of time between the close of one academic year and the beginning of the succeeding academic year.

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> b. "Academic year" means the period of a year, which may not be less than the period required by state statute, during which the regular day school is maintained.

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> c. "Regression" means reversion to a lower level of functioning, evidenced by a decrease in the level of basic behavioral patterns or skills, which occurs as a result of an interruption in educational programming. These behaviors or skills are specified on a student's current IEP.

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> d. "Recoupment" means recovery of basic behavioral patterns or skills, specified on the IEP, to a level demonstrated prior to the interruption of educational programming.

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> e. "Self-sufficiency" means specific skills and behaviors which a student must master to achieve an appropriate level of functioning in view of the student's

disabling condition. Each instructional area in the IEP is analyzed to determine its relationship to self-sufficiency in view of the student's needs. The IEP team determines what is an appropriate level of functioning.

f. "ESY program" means the individual educational program provided by the school to a student during the extended school year.

g. "Board" means the Utah State Board of Education.

h. "Multidisciplinary team" means an evaluation team, each member of which is qualified in a specialty area related to student evaluation, which includes members from a variety of disciplines. The team must include at least one teacher, or other professional, knowledgeable in the area of the student's disability.

2. The determination of eligibility includes:

a. Students eligible for ESY Services are:

(1) those who require an extended school year to remain in their current least restrictive environment placement; and/or

(2) those for whom attainment of their expected level of self-sufficiency and independence is unlikely, in view of their disabilities, without ESY services.

b. The multidisciplinary team must document that a delay or break in the provision of special education and related services would result in an education program of little benefit to the student. Despite the lack of definitive documentation, a student with disabilities may not be denied ESY services if the IEP team determines the need for such services.

c. The multidisciplinary team shall meet to determine recommendations for eligibility for ESY services.

(1) if a student is recommended as eligible, the multidisciplinary team takes necessary steps to convene the IEP team to develop the student's ESY program. If the need is documented, the ESY program may be written into the student's regular IEP;

(2) if a student is recommended as ineligible, the multidisciplinary team notifies the student's parents in writing of the decision;

(3) both the written recommendation of ineligibility and the scheduling of the IEP must be accomplished in sufficient time to permit any party to exhaust administrative remedies prior to the beginning of the ESY program. Parents shall be informed of their rights and of procedures through which they may challenge the decision of the multidisciplinary or the IEP team.

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3. The primary goals of all students requiring ESY services are to become as functionally independent as possible within the limits of their disabilities and to be maintained in the least restrictive environment appropriate to their needs. The program of special education and related services is designed to maintain, in the appropriate least restrictive environment, the current level of a student's skills and behavior in areas identified by the student's IEP team.

a. The type and length of the program which a student requires is determined on an individual basis and need not be comparable to the program previously provided.

b. New goals and objectives may not be added to a student's IEP for implementation in the ESY program. Programs shall consist of activities developed to maintain skills identified on the IEP developed for the academic year.

c. Related services shall be provided when required for the student's skills to be maintained.

d. The least restrictive environment available during summer programming must be considered for ESY programs.

4. Division of responsibilities include:

a. The duties of the Utah State Office of Education shall include:

(1) monitoring ESY compliance through:

(a) district program administrative reviews;

(b) making on-site reviews of LEA plans and district special education policies and procedures;

(c) providing technical assistance; and

(d) requiring attendance and membership accountability.

(2) providing technical assistance to districts;

(3) collecting data on:

(a) the number and disabilities of students served;

(b) the types of program delivery models used; and

(c) program effectiveness.

(4) developing guidelines

b. The duties of local school districts shall include:

(1) establishing district procedures which are in accordance with Board Rules;

(2) providing inservice workshops and on-site visits to assure that Board and district procedures are appropriately understood and implemented;

(3) establishing timelines to accomplish the purposes of this Rule;

(4) analyzing district-wide needs, reported by professionals, or ESY services for individual, eligible students;

(5) determining district ESY program parameters based upon data received from educators on individual, eligible students. The parameters shall include the personnel required to provide special education and related services, location of services, and budget specifications;

(6) ensuring parents and professionals have received information about due process and grievance procedures for the appeal of eligibility determinations and program parameters; and

(7) implementing processes to collect program effectiveness data.

c. The duties of LEA representatives shall include:

(1) establishing multidisciplinary team timelines and programming level procedures in accordance with Board and district rules and policies:

(a) setting collection timelines for gathering regression and recoupment data;

(b) identifying students who are potentially eligible for ESY services;

(c) scheduling multidisciplinary team meetings required to summarize data and make recommendations regarding eligibility; and

(d) scheduling IEP team meetings to determine eligibility for ESY services and to develop appropriate ESY programs.

(2) transmitting relevant information to the district.

d. The duties of multidisciplinary teams shall include:

(1) reviewing current IEPs for students identified as potentially eligible for ESY services;

(2) reviewing data and input collected from educators, other professionals, and parents;

(3) recommending from existing information student eligibility for ESY services;

(4) setting dates for eligible students' IEP team meetings;

(5) notifying, in writing, the parents of ineligible students of the recommendation of ineligibility, informing them of their rights, and informing them of procedures through which the recommendation may be challenged. The written notice must be sent in accordance with district timelines; and

(6) reviewing data collection procedures.

e. The duties of educators shall include:

(1) identifying students potentially eligible for ESY services and verifying the list of students identified as potentially eligible for ESY services;

(2) identifying IEP goals and objectives related to areas required to maintain current placement. This may be done at the time the IEP is developed for the academic year;

(3) indicating known or reported conditions or behaviors that may be exhibited in the educational environment or elsewhere, that, if not provided for in an appropriate educational environment or pro-active educational program, may cause regression;

(4) establishing and implementing on-going data collection processes for continuous monitoring of student progress, including data to provide information about the following:

(a) how often a review of previously introduced material is required;

(b) whether the student demonstrates

inconsistency in the mastery retention of skills;

(c) critical stages reached by the student in mastery of skills;

(d) whether the student requires a more intense rate of instruction than similar students with a like disability in order for progress to take place;

(e) regression and recoupment periods for a student based on a consensus of input from parents, advocates, and professionals:

1) a reasonable recoupment period for a break planned by the educational agency for eight to twelve weeks is 20 instructional days, of three to four weeks is five to seven instructional days, or two weeks is three instructional days;

2) exceptions to the number of days constituting a reasonable recoupment period may be granted on a case-by-case basis by the IEP team.

3) sources of data for documenting regression and recoupment periods may include:

a) achievement of goals on successive IEPs;

b) progress reports maintained by educators, therapists, and others having direct contact with the student before and after interruptions in the education program;

c) reports by parents of negative changes in adaptive behaviors over break periods;

d) medical and other agency reports indicating degenerative-type difficulties which become exacerbated during breaks in educational programming;

e) observations of educators and others;

4) techniques to collect data for documentation may include:

a) daily monitoring;

b) behavior checklists; student self-assessments, parent assessments, and professional assessments;

c) documented observation of the student;

d) specific professional assignment evaluations.

(f) The role of a student's parent or guardian in at home follow-up of education programs which are related to areas of self-sufficiency, including the following:

1) the complexity of the program to be carried out at home;

2) the level of expertise required to maintain skills at home;

3) the amount of time required.

(5) retrieving, at specified intervals, data related to acquired skills and regression and recoupment;

(6) evaluating data in multidisciplinary team conferences;

(7) reviewing and summarizing, with the multidisciplinary team, data results in a format required by the district; and

(8) meeting with the IEP team to review regression and recoupment of skills in areas of self-sufficiency.

f. The duties of the IEP team shall include:

(1) reviewing data and documentations of the multidisciplinary team and determining eligibility;
(2) reviewing the recommendations of the multidisciplinary team and determining eligibility; and
(3) developing an extended school year program for eligible students.
g. The duties of a parent of a student approved for the ESY services shall include:
(1) meeting with the members of the student's IEP team to formulate the IEP and identify goals and objectives related to areas of self-sufficiency;
(2) completing parent questionnaires as appropriate; and
(3) following through with the educational program, as agreed to, at home in concert with school team efforts.

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WEST VIRGINIA - REGULATIONS - SP.ED.

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5. The IEP Committee shall annually determine and document a student's need for extended school year services in accordance with the following:
a. Students with disabilities entitled to extended school year (ESY) services are those who require special education and related services in excess of the regular school year to maintain identified critical skills as described in the current IEP.
b. Documentation that a student meets the local educational agency's criteria for determining whether the student:
1) exhibits, or may exhibit, regression during an interruption in educational programming;
2) exhibits, or may exhibit, a limited ability to recoup, or relearn skills, once programming has resumed; and,
3) exhibits regression/recoupment problem(s) that interfere with the maintenance of identified critical skills as described in the current IEP.
c. The lack of clear evidence of such factors may not be used to deny a student extended school year services, if the IEP Committee determines the need for such services and includes ESY in the IEP.
d. The ESY services shall consist of activities developed to maintain skills identified on the IEP developed for the academic year.
1) The IEP Committee shall document the duration, number of hours per week, and physical location of the special education and related services to be delivered.
2) The type and length of the program which the student requires is determined on an individual basis by the IEP Committee.
3) ESY services for a student with disabilities do not have to be comparable to the program previously provided during the academic year.

e. Students are not automatically excluded from consideration for ESY services because of the category of disability or the type of special education instruction

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that they require during the summer to receive a free appropriate public education.

> f. Annually inform parents of students with disabilities of the availability of extended year programming and the procedures and criteria for determining a student's need for ESY services, and of their right to refuse extended year services.

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WYOMING - REGULATIONS FOR SP.ED.

> Section 24. Extended School Year (ESY) and Summer School. Each public agency provides extended school year (ESY) services for each child with a disability as deemed appropriate by an IEP Team. Summer school is voluntary and IEP Teams do not determine summer school placement. The parent(s) voluntarily enroll a child in summer school programs if summer school programs are provided by the public agency.

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> (a) ESY. To qualify a child for ESY services, the IEP Team agrees that lack of ESY programming would potentially cause a major loss of IEP related skills such that recoupment would require three or more months of the succeeding school year.

> (i) At least annually, the IEP Team uses information about each child to determine and document the need for ESY. The Team may consider information about:

> (A) the child's current performance;

> (B) the child s health and other related factors;

> (C) the child s past history of extended school year services; and

> (D) information from teacher, parent and child interviews.

> (ii) An IEP Team may not prescribe ESY services solely because a child failed to achieve IEP goals and objectives during the school year. If the Team determines that a child is progressing adequately from year to year despite lack of ESY programming, the child does not require ESY services.

> (iii) ESY services occur in the least restrictive environment. However, increased isolation of children with disabilities during ESY programming when nondisabled children are not attending school does not violate LRE requirements.

> (iv) The IEP Team develops or revises a current IEP for any child who receives ESY services.

> (b) Summer School. Summer school is a supplemental program voluntarily made available by a public agency, but not required by the child. Any child with a disability may attend summer school, if summer school is voluntarily provided by the public agency. IEP goals and objectives are not written for summer school programs since special education services are not required during a voluntary summer school enrollment.